

15 FAM 440

PURCHASE AGREEMENTS

(CT:OBO-1; 04-29-2005)
(Office of Origin: OBO)

15 FAM 441 OPTION AGREEMENTS AND PROCEDURES

15 FAM 441.1 Option Agreements

(CT:OBO-1; 04-29-2005)
(Uniform State/USAID/Commerce/Agriculture/DIA)

An option to purchase real property is a continuing offer. The period during which the option is in force gives the U.S. Government the opportunity to examine all aspects of the potential purchase. Posts should obtain an option that is valid for a specified period of time and that contains the proposed terms of the sale. Exercising an option to purchase is a unilateral action that does not require the agreement of the property owner.

15 FAM 441.2 Option Agreement Procedures

(CT:OBO-1; 04-29-2005)
(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Posts should follow these steps in the drafting, approval, and execution of option to purchase agreements:
 - (1) Post drafts an option agreement, using the model format in 15 FAM Exhibit 441A;
 - (2) Post sends the option agreement to the Bureau of Overseas Buildings Operations (OBO) or the Overseas Management Support Division in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) for approval;
 - (3) Upon approval, post presents the option agreement along with an Affidavit of Title, using the model format in 15 FAM Exhibit 441B, to the property owner;
 - (4) As the affidavit is a sworn statement, the owner must execute it before a person authorized to administer oaths (notary or other public official);

- (5) Post and owner must sign the option agreement before a notary or other public official to ensure it complies with local law; and
 - (6) Post registers or records the option as provided by local law to ensure that it is officially validated and recognized in the locally accepted manner.
- b. When the post, with OBO or USAID/W (M/OMS) approval, exercises the option to purchase, the post sends a notice of exercise of option (see format in 15 FAM Exhibit 441C). A notice of exercise of option should be sent by registered mail or handcarried to the owner, who should acknowledge receipt in writing, dating and signing a copy that the post will retain.
- c. The draft format for Affidavit of Title (15 FAM Exhibit 441B) serves as a useful checklist of necessary points.

15 FAM 442 PURCHASE AGREEMENT PROVISIONS

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

Whether the agreement to purchase arises out of a formal contract of sale or out of an option and exercise of the option, the agreement must contain the following provisions, required by both the Bureau of Overseas Buildings Operations (OBO) and the Overseas Management Support Division in the Bureau for Management, USAID/Washington (USAID/W - M/OMS):

- (1) Provide for the conveyance of an unencumbered “fee simple” title, or the nearest equivalent, in the property to the United States of America, with the vendor’s warranty against any and all persons claiming title under the vendor’s name or in the name of the vendor’s heirs or assigns. Title will be acquired in the name of the United States of America, whether the purchasing agency is the Department of State or the U.S. Agency for International Development;
- (2) Provide that payment of the purchase price is conditional upon the receipt of an opinion from a competent, disinterested expert to be selected by the post, certifying to all the points listed in 15 FAM 432.4 and 15 FAM 432.5;
- (3) Include the most complete description of property possible under local law and custom, which shall correspond exactly to the description in the valid conveyance and other instruments affecting title to real property as they are officially recorded, including the land area, the nature of existing boundaries (e.g., walls, streams,

- streets), the lengths and direction of boundary lines, the measurement of angles between boundary corners, the names of abutting streets and owners of adjoining property, and, where local regulations permit, an attached plan of the property as a part of the contract. This description, subject to the findings revealed by the search of title and field verification survey, may need amplification or correction as provided in 15 FAM 432. It shall include description of any buildings, improvements, and fixtures on the property, and an inventory of any furniture, furnishings, or equipment included in the sale;
- (4) Provide that the sale is subject to completion of a field verification survey and its acceptance by OBO or USAID/W (M/OMS), which survey shall be made by a competent, disinterested engineer or surveyor selected by the post, who is duly authorized to practice in the locality and who shall show by certified plat the information required by 15 FAM Exhibit 432.3;
 - (5) Avoid, except as expressly authorized by OBO or USAID/W (M/OMS) in each case, any provision requiring:
 - (a) Payment by the U.S. Government of insurance or indemnity charges;
 - (b) U.S. Government responsibility for damages to persons or property on adjoining properties not owned by the U.S. Government;
 - (c) The submission of disputes to boards or panels for arbitration, or to the jurisdiction of the local courts;
 - (d) The reversion of the property to the previous owner without full repayment to the United States, if the United States fails to improve the property within a specified period of time;
 - (e) The inspection of the property by any person(s) not in the employ of the U.S. Government;
 - (f) Any servitude or easement for public or private use that does not directly benefit the U.S. Government;
 - (g) The retention of rights, by the seller, to exploit any mineral or other resources on or under the property; or
 - (h) The inclusion of conveyance taxes in the purchase price;
 - (6) **Authority to execute agreements:** OBO, pursuant to the Foreign Buildings Act, provides authority to sign the relevant agreement for real property purchases and sales. A contracting officer appointment is not required. Posts must obtain prior OBO authority to execute purchase and sales agreements.

15 FAM 443 ACQUISITION BY GIFT

15 FAM 443.1 Gifts Covered by this Section

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

These procedures apply to all offers of real property, improvements to real property, furniture, furnishings, equipment, stocks, bonds, or other valuables to the U.S. Government for purposes of supporting the U.S. Government's foreign buildings and properties program. Proposed gifts may also take the form of personal services or materials.

15 FAM 443.2 Reporting and Approval of Gifts

(CT:OBO-1; 04-29-2005)

(Uniform State/USAID/Commerce/Agriculture/DIA)

- a. Only the Bureau of Overseas Buildings Operations (OBO) and the Overseas Management Support Division in the Bureau for Management, USAID/Washington (USAID/W - M/OMS) are authorized to accept gifts of real property. Posts must report all offers of such gifts to OBO or USAID/W, including the information required by 15 FAM 432.2 or similar information. Posts may not accept such property until approved by OBO or USAID/W. (See also 2 FAM Exhibit 964.2-2.)
- b. Offers of personal services or materials must be reported to and approved by OBO, USAID/W, or the Department of Commerce's U.S. and Foreign Commercial Service (US&FCS), as appropriate. Posts should forward cost invoices or other documents evidencing the stated value, the name and nationality of the donor, and proof of ownership of the proposed gift. Other information may be required.
- c. Posts must submit reports of offers or bequests and requests for approval to accept these as follows:
 - (1) Real property offered to USAID: USAID/W, Attention: M/OMS;
 - (2) Personal property offered to US&FCS: US&FCS/OPM 31-2;
 - (3) All other offers of real or personal property: OBO/REPM/AQD (OBO's Acquisitions and Disposals Division in the Real Estate and Property Management Office).
- d. Any conditions pertaining to a gift should be reported fully, since a prohibitive condition, or a requirement to pay additional sums before acceptance, will preclude acceptance.

15 FAM 444 THROUGH 449 UNASSIGNED

15 FAM EXHIBIT 441A

FORMAT FOR OPTION TO PURCHASE REAL PROPERTY

(CT:OBO-1; 04-29-2005)

(Amend, as appropriate, for use with USAID options.)

For and in consideration of the sum of _____ dollars (or a local currency equivalent), receipt whereof is hereby acknowledged, [name(s) of owner(s) and address(es)], hereinafter called the Vendor, for (his, her, its, their) heirs, executors, administrators, successors, and assignees, grants on this _____ day of ____ [Month]__, [Year]__, to the United States of America, acting by _____, of the American Embassy (Consulate) ____ [Location]__, hereinafter called the Vendee, the sole right and option for the period of ____ [fill in dates or specific time period]__, to purchase the real estate herein described on the terms and conditions herein set forth.

1. The premises to be sold by the exercise of this option are situated in the city of _____, county (etc.) of _____ and state (province, etc.) of _____ and described as follows, to wit: [here carefully fill in exact legal description of premises] together with the appurtenances and easements thereunto, including the buildings and improvements thereon. The premises to be sold shall be sold to the Vendee in fee simple (complete, absolute and perpetual ownership)* with covenant of warranty, covenant for peaceful possession, and covenant against encumbrances. In this latter connection, the Vendor shall execute an affidavit of title when called upon to do so by the Vendee (See 15 FAM Exhibit 441B). The option price for said property is [fill in sum of currency authorized], and on election to purchase shall be due and payable by the Vendee to the Vendor at the American Embassy (Consulate) at _____, in full, on the date the deed is delivered and accepted by the Vendee and vacant possession is given.

2. Notice of election to purchase hereunder by the Vendee or its assigns shall be in writing and shall be given to the Vendor at _____ before the expiration of this option as provided above.

3. Within fifteen days after notice of election to purchase shall be given to the Vendor by the Vendee or its assigns, the Vendor agrees to furnish, at his/her own cost and expense, and deliver to the Vendee at

the American Embassy (Consulate) at _____ an unlimited certificate or abstract of title (as the case may be), made by a reputable firm or company, and the title documents. The Vendee shall have ninety days from and after delivery of said certificate (or abstract) of title and title documents within which to examine the same. If the title to said property, as then found by the Vendee, is well vested in the Vendor, permitting the Vendor to convey fee simple absolute title (complete, absolute and perpetual ownership) to the Vendee, with covenant of warranty and covenant against encumbrances; and is free and clear of and from all defects, clouds on title, liens, incidents of tenure, encumbrances, charges, taxes and assessments; and the aforesaid description of the property corresponds exactly with the description in valid deeds as officially recorded in the land record office, which description, however, contingent on the findings of a local expert in land titles and a field verification survey made by an engineer or land surveyor, shall be subject to correction at the expense of the Vendor (See 15 FAM 432.3 and 15 FAM Exhibit 441C); and if it is found that the Vendor has full power to convey to the Vendee, then the Vendee shall, within the time aforesaid, perform the provisions of paragraph 2 of this option; and if said title shall be otherwise than as above stated, then this option shall, at the Vendee's election, be at an end, and the Vendor agrees to pay the Vendee the sum of _____ dollars paid by it as consideration for this option.

4. Upon performance by the Vendee hereunder, the Vendor agrees to execute and deliver to the United States of America, a deed of conveyance conveying fee simple title (complete, absolute and perpetual ownership) with covenant of warranty and covenant against encumbrances.

5. Vacant possession of said property shall be delivered to the Vendee, who shall be entitled to the same on execution and delivery and acceptance of the deed of conveyance as aforesaid.

6. All insurance premiums, and/or taxes or assessments levied or assessed on the said property and accruing before conveyance hereunder shall be paid by the Vendor.

7. Gas and electric fixtures, gas stoves, hot water heaters, chandeliers, carpets, linoleums, mats and matting in halls, screens, shades, awnings, ashcans, refrigerators, and heating apparatus, if any, and all other personal property appurtenant to or used in the operation of said premises are represented to be owned by the Vendor and are included in this sale as per the attached inventory.

8. The risk of loss or damage to the premises by force majeure until conveyance of title hereunder is assumed by the Vendor.

IN WITNESS WHEREOF, the Vendor has hereunto subscribed (his, her, its, their) name(s) and set (his, her, its, their) seal(s) as of the date first written above.

____ [Name, Title and Address] _____ VENDOR

The United States of America, Acting By:

____ [Name, Title and Address] _____ VENDEE

*If the Vendor has a title other than fee simple (or its equivalent), clearly identify his or her title rights.

15 FAM EXHIBIT 441B

FORMAT FOR AFFIDAVIT OF TITLE

(CT:OBO-1; 04-29-2005)

(Amend, as appropriate, for use with USAID options.)

[Fill in name(s) and address(es) of owner(s) who is (are) granting the option to which this affidavit is an attachment.]

being (all) duly sworn, does (do) depose and state:

That (he, she, it, they) is (are) the absolute owner(s) of the premises known as _____ and more particularly described in the option, dated _____, to which this affidavit of title is an attachment;

That said premises have been held by the deponent(s) and preceding owners from whom title is derived for the period of _____ years last past and upwards and that the possession thereof has been peaceable and undisturbed and that the title thereto has never been disputed or questioned to the knowledge of the deponent(s);

That the deponent(s) does (do) not know of anything that might tend to bring said title into question or by reason of which any claim to any part of said premises or to any undivided interest therein, adverse to deponent(s), might be set up or made;

That said premises are free and clear of any and all liens, encumbrances or clouds of every name, nature or kind, either recorded or unrecorded, EXCEPT:

[Here describe any claims or clouds on title.]

Deponent(s) does (do) further state that there is no judgment, order or decree against deponent(s) unpaid or unsatisfied of record;

That no proceedings in bankruptcy have ever been instituted by or against deponent(s) nor has (have) deponent(s) ever made any assignment for the benefit of creditors;

That at this time there are no unpaid taxes or assessments, ordinary or extraordinary, now due or levied against said premises or any part thereof, EXCEPT:

[Here describe any unpaid taxes or assessments.]

That deponent(s) is (are) citizen(s) of _____ and of the age of 21 years and upwards;

That deponent(s) is (are) married to _____, who is (are) over the age of 21 years and competent to convey real estate;

(or)

That deponent(s) has (have) never been married to any one else now living;

That deponent(s) is (are) now in possession of said premises above described;

That each and all of the foregoing statements and representations are in each and all respects true and are made for the purpose of inducing the United States of America, acting by _____, of the American Embassy (Consulate) at _____, to purchase the said property for the sum of _____.

_____ [Name, Title and Address] DEPONENT(S)

The United States of America, Acting By:

_____ [Signature]

_____ [Name and Title]

Subscribed and sworn to before me this _____ day of __[Month]__, __[Year]__, after the contents thereof had been fully explained to me by deponent(s).

[Seal of Notary Public, Commissioner of Deeds, or other person authorized to administer oaths.]

15 FAM EXHIBIT 441C FORMAT FOR NOTICE OF EXERCISE OF OPTION

(CT:OBO-1; 04-29-2005)

(Amend, as appropriate, for use with USAID options.)

To: _____

The United States of America, acting by the undersigned, hereby gives notice to you that the United States Government elects to exercise its option to purchase the property at _____ on the terms stated in an option agreement executed by you on the _____ day of ____ [Month] ____, [Year]_. Will you please comply with paragraph number 4 of that agreement within the next 15 days.

The United States of America, Acting By:

_____ [Signature] _____

_____ [Name and Title] _____

_____ [Place and Date] _____